

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
MUHAMMED ZBEIDA TILLISY,  
  
Defendant.

Case No. CR13-310-RSL  
  
ORDER DENYING  
DEFENDANT’S MOTIONS

This matter comes before the Court on defendant’s (1) “Petition for Nunc Pro Tunc Designation” (Dkt. # 259), (2) “Motion to Appoint Counsel” (Dkt. # 260), and (3) “Supplemental Motion for Federal Primary Jurisdiction” (Dkt. # 263). Having reviewed the submissions of the parties and the remainder of the record, the Court finds as follows:

Defendant is currently a prisoner in the custody of the State of Washington at the Monroe Correctional Complex. Inmate Search, Dep’t of Corr. Wash. State, <https://doc.wa.gov/information/inmate-search/default.aspx> (last visited June 23, 2022). Defendant is serving the following sentences consecutively: (1) a 120-month state term of confinement imposed by the Snohomish County Superior Court in Case No. 12-1-01246-1, (2) a 43-month state term of confinement imposed by the Snohomish County Superior Court in Case No. 12-1-01574-5, (3) an 84-month federal term of imprisonment imposed by this Court in the above-captioned matter, and (4) a one-year and one-day federal term of imprisonment for a supervised release violation in Case No. CR09-269-MJP. Dkts. # 185 at 12, 194 at 3; CR09-269-MJP Dkt. # 232 at 3.

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1 Defendant moves the Court to: (A) find that he has been subject to federal primary  
2 jurisdiction since September 14, 2012 and grant him credit for time served since that date  
3 towards his federal sentences, see Dkts. # 259, 261, 262, 263, and (B) appoint counsel, see Dkt.  
4 # 260. The Court considers each request in turn.

5 **A. Federal Primary Jurisdiction**

6 Defendant moves the Court to find that he has been subject to federal primary jurisdiction  
7 since September 14, 2012 and grant him credit for time served since that date towards his  
8 federal sentences by ordering the BOP to nunc pro tunc designate defendant's state prison  
9 facility as the facility for service of his federal sentences.

10 A brief recitation of the relevant facts provides context for defendant's arguments: on  
11 May 25, 2012, Judge Pechman issued an arrest warrant for defendant premised on violations of  
12 defendant's conditions of federal supervised release. CR09-269-MJP Dkt. # 155. On May 30,  
13 2012, defendant was arrested on state charges and detained in the Snohomish County Jail  
14 pending trial. Dkt. # 183 at ¶ 3. Due to Judge Pechman's arrest warrant, a federal detainer was  
15 lodged against defendant. Id. On September 10, 2012, defendant initiated a fraudulent scheme  
16 whereby he impersonated Assistant U.S. Attorney Aravind Swaminathan and conned Deputy  
17 U.S. Marshal Thomas Decker into lifting his federal detainer and informing Snohomish County  
18 that it was no longer in place. Id. at ¶¶ 7-10. On September 12, 2012, defendant's father posted  
19 defendant's \$25,000 state bail. Id. at ¶ 10. On the same date, the Snohomish County Jail  
20 released defendant, and because the federal detainer had been lifted, he was not transferred to  
21 federal custody upon his release from state custody. Id. On September 14, 2012, having  
22 discovered the fraud, the U.S. Marshals Service located defendant at his girlfriend's house,  
23 arrested him, and returned him to state custody. Id. This course of conduct ultimately resulted  
24 in defendant's conviction by a jury before this Court for false statement or representation to a  
25 federal agency, in violation of 18 U.S.C. § 1001, aggravated identity theft, in violation of 18  
26 U.S.C. § 1028A(a)(1), and false impersonation of a federal official, in violation of 18 U.S.C.  
27 § 912, among other felony convictions. Dkt. # 154.

1 Defendant now argues that when he posted state bail on September 12, 2012, this caused  
 2 the state to relinquish primary jurisdiction. Therefore, he argues, he has been subject to federal  
 3 primary jurisdiction since the U.S. Marshals rearrested him on September 14, 2012, and, in  
 4 consequence, his state and federal sentences have been running concurrently since that time.  
 5 Defendant's argument has two fatal defects: (1) the fact that he posted state bail did not  
 6 ultimately deprive the state of primary jurisdiction, and (2) this Court and Judge Pechman both  
 7 explicitly ordered defendant's federal sentences to run *consecutively* to his state sentences.

8 First, the doctrine of comity establishes that the state regained primary jurisdiction when  
 9 the U.S. Marshals returned defendant to state custody on September 14, 2012. As a general rule,  
 10 "the first sovereign to arrest a defendant obtains primary jurisdiction over him as against other  
 11 sovereigns." Johnson v. Gill, 883 F.3d 756, 761 (9th Cir. 2018) (citing Ponzi v. Fessenden, 258  
 12 U.S. 254, 260 (1922)). "A sovereign's priority terminates when the sentence expires, charges  
 13 are dismissed, or the prisoner is allowed to go free." Id. at 765 (citations omitted). Defendant is  
 14 correct that when a defendant is released on bail, the releasing sovereign relinquishes primary  
 15 jurisdiction. See Taylor v. Reno, 164 F.3d 440, 445 (9th Cir. 1998). The government's  
 16 response memorandum does not confront the fact that defendant posted state bail and therefore  
 17 oversimplifies this point. See Dkt. # 264 at 2. Nonetheless, applying the doctrine of comity, the  
 18 Court concludes that the state indeed regained primary jurisdiction.

19 When one sovereign transfers a defendant to another sovereign, the determination of  
 20 primary jurisdiction "requires an exercise of comity between the sovereigns, and turns on  
 21 whether the [sovereign] with primary jurisdiction intended to surrender its priority upon transfer  
 22 or merely transferred temporary control of the defendant to the [other sovereign]." Johnson, 883  
 23 F.3d at 765. Under the doctrine of comity, the discretion to elect to relinquish a defendant to  
 24 another sovereign is an executive, not a judicial, function. United States v. Warren, 610 F.2d  
 25 680, 685 (9th Cir. 1980) (citing Ponzi, 258 U.S. at 261-62; Strand v. Schmittroth, 251 F.2d 590,  
 26 609 (9th Cir. 1957), cert. dismissed, 355 U.S. 886 (1957)). "In the federal system, the 'power  
 27 and discretion' to practice comity is vested in the Attorney General." Id. (citing Ponzi, 258 U.S.  
 28 at 262). The U.S. Marshals Service is a bureau within the U.S. Department of Justice under the

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1 authority and direction of the Attorney General, 28 U.S.C. § 561(a), and the Assistant U.S.  
2 Attorney is statutorily authorized to assist the Attorney General in the performance of his duties,  
3 28 U.S.C. § 506.

4 Applying the doctrine of comity to the facts of this case, even if the state forfeited  
5 primary jurisdiction when it released defendant on bail and the federal government gained  
6 primary jurisdiction when the U.S. Marshals apprehended defendant, the federal government  
7 ceded primary jurisdiction back to the state when the U.S. Marshals returned defendant to the  
8 state's custody. This is because the U.S. Marshals Service, as a designee of the Attorney  
9 General, had the power to return defendant to state primary jurisdiction under the doctrine of  
10 comity, and it chose to do so. Accord Warren, 610 F.2d at 685. Further, the Assistant U.S.  
11 Attorney ratified defendant's return to state primary jurisdiction when the office waited to  
12 commence defendant's prosecution before this Court until after his conviction and sentencing in  
13 state court. See Dkts. # 1, 16 (federal complaint and indictment dated after state judgments).  
14 Primary jurisdiction, is, after all, the method of establishing "who goes first." See Taylor, 164  
15 F.3d at 444 ("The term 'primary jurisdiction' in this context refers to the determination of  
16 priority of custody and service of sentence between state and federal sovereigns.").

17 Second, even if, assuming *arguendo*, defendant was subject to federal primary  
18 jurisdiction since his rearrest on September 14, 2012, this would not shorten his total period of  
19 incarceration. Defendant assumes that if he has been subject to federal primary jurisdiction  
20 since September 14, 2012, the fact that the state judgments are silent on whether the state  
21 sentences are to run consecutively or concurrently with the federal sentences means that they  
22 must run concurrently. Defendant is incorrect. Pursuant to 18 U.S.C. § 3584(a), "[I]f a term of  
23 imprisonment is imposed on a defendant who is already subject to an undischarged term of  
24 imprisonment, the terms may run concurrently or consecutively . . . . Multiple terms of  
25 imprisonment imposed at different times run consecutively unless the court orders that the terms  
26 are to run concurrently." 18 U.S.C. § 3584(a). Defendant's state sentences were imposed on  
27 February 21, 2013 and July 3, 2013. Dkt. # 261 at 5, 18. Judge Pechman imposed her sentence  
28 on September 16, 2013. CR09-269-MJP Dkt. # 232. This Court imposed its sentence on

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January 21, 2016. Dkt. # 194. Both federal sentences were imposed after defendant's state sentences. By statute, both federal sentences therefore run consecutively to defendant's state sentences (and this Court's sentence also runs consecutively to Judge Pechman's sentence). Reinforcing this result is the fact that both this Court and Judge Pechman specifically ordered the sentences to run consecutively. See CR09-269-MJP Dkt. # 232; Dkt. # 194. Invoking the doctrine of primary jurisdiction to change the order that defendant serves his sentences would not change this result.<sup>1</sup>

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<sup>1</sup> Defendant's citations to law are all inapposite or unhelpful to his arguments.

Ryan v. Gonzales, 568 U.S. 57 (2013), holds that there is not a right to competence during federal habeas corpus proceedings. This is not a habeas corpus proceeding, and competence is irrelevant to defendant's arguments.

18 U.S.C. § 3585(b) provides:

A defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences - (1) as a result of the offense for which the sentence was imposed; or (2) as a result of any other charge for which the defendant was arrested after the commission of the offense for which the sentence was imposed; *that has not been credited against another sentence.*

18 U.S.C. § 3585(b) (emphasis added). This statute, which governs the crediting of time spent in detention prior to the date that the sentence commenced, explicitly prohibits "double credit" against multiple sentences. Even if applicable, it would not shorten his period of imprisonment in any way.

U.S.S.G. § 5G1.3(b) is a sentencing guideline. It is therefore merely advisory and does not bind the Court. See United States v. Booker, 543 U.S. 220, 245 (2005). Further, subsection (b) governs only "relevant conduct," and defendant's state offenses are not considered relevant conduct to his convictions before this Court. See Dkt. # 184 at 5.

18 U.S.C. § 3621 governs the imprisonment of a convicted person. This statute grants the BOP authority to nunc pro tunc designate a state prison for service of a federal sentence. See 18 U.S.C. § 3621(b); see also Rodriguez v. Copenhaver, 823 F.3d 1238, 1242 (9th Cir. 2016). Because this is a discretionary power statutorily granted to the BOP, this Court may only review the BOP's decision for abuse of discretion; it may not direct the BOP in the first instance. See Rodriguez, 823 F.3d at 1242; accord Reynolds v. Thomas, 603 F.3d 1144, 1153 (9th Cir. 2010). The Court notes that defendant's motion recognizes this: "The BOP has sole discretion authority when designating state or non-federal institutions for service of imprisonment terms issued by the District Courts." Dkt. # 259 at 2-3.

Woodford v. Garceau, 538 U.S. 202 (2003), held that certain amendments to the habeas corpus statute applied to a habeas petition that was not pending before the district court on the effective date of the amendments. This is not a habeas petition, and the statute discussed in that case does not apply here.

1 Finally, the Court notes that even if, again assuming *arguendo*, defendant was subject to  
2 federal primary jurisdiction since his rearrest on September 14, 2012, the Court had the power to  
3 direct the BOP to nunc pro tunc designate the Monroe Correctional Complex for federal  
4 sentence service, *and* the Court so ordered, it is unclear how this would benefit defendant.  
5 Specifically, defendant asks the Court to direct the BOP to designate his time in a state facility  
6 from September 14, 2012 to present as federal time because he could then seek relief from the  
7 federal court. See Dkt. # 259 at 3. However, if defendant's federal sentences had commenced  
8 on September 14, 2012, 85 months and one day (the totality of defendant's federal sentences)  
9 would have elapsed on September 15, 2020, and his consecutive state sentences would have in  
10 turn commenced at that time. Defendant would, therefore, still find himself in state custody  
11 subject to state primary jurisdiction. However, he would also find himself ineligible for  
12 federally appointed counsel and other federal programs for the remainder of his state time,  
13 which would be approximately another decade. Under the status quo, defendant enters federal  
14 custody this summer, and will then have the opportunity to renew his repeated motions  
15 improperly brought before this Court while he was in state custody. The Court will review his  
16 motions on the merits if brought at that time.

#### 17 **B. Appointment of Counsel**

18 Defendant argues that he is entitled to appointment of counsel because the Court's prior  
19 denials of his motions have been grounded in its "incorrect" conclusion that he is subject to state  
20 primary jurisdiction. See Dkt. # 260.

21 Defendant has previously filed five similar motions to appoint counsel. Dkts. # 220, 227,  
22 235, 240, 245. These motions have been denied on the grounds, *inter alia*, that defendant is not  
23 in federal custody. The second motion was denied after referral to the Office of the Federal  
24 Public Defender to advise the Court if it sought appointment, which it declined. Dkts. # 224,  
25 229, 230, 239, 241.

26 As explained above, defendant is in state custody and subject to state primary jurisdiction  
27 at this time. The Court's prior rulings therefore stand. Defendant may renew his request for  
28 counsel once he enters federal custody.

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